

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION

BRAD DAVIS,

Petitioner,

v.

No. 1:13-cv-01225-JDB-egb

No. 1:07-cr-10063-JDB-1

UNITED STATES OF AMERICA,

Respondent.

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ORDER DIRECTING PETITIONER TO FILE RESPONSE

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On September 25, 2017, the Court granted the motion of Petitioner, Brad Davis, to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (“Petition”). (Case Number (“No.”) 13-cv-01225, Docket Entry (“D.E.”) 17.) Judgment was entered on September 26, 2017, (*Id.*, D.E. 18), and a hearing for resentencing was set in Davis’s criminal case. (*See* No. 07-cr-10063, D.E. 97.) Before the Court is the motion of Respondent, United States of America, for relief from judgment under Fed. R. Civ. P. 60(b). (No. 13-cv-01225, D.E. 19.)

Respondent argues that the judgment in this case must be vacated in light of the Sixth Circuit’s September 27, 2017, decision in *United States v. Verwiebe*, No. 16-2591, 2017 WL 4273974 (6th Cir. Sept. 27, 2017). In that case, the appellate court extended the Supreme Court’s ruling in *Voisine v. United States*, 136 S. Ct. 2272 (2016), to the Career Offender provision of the Sentencing Guidelines. *Verwiebe*, 2017 WL 4273974, at \*3. The Supreme Court in *Voisine* held that “use of . . . physical force” under 18 U.S.C. § 922(g)(9), includes reckless conduct. *Voisine*, 136 S. Ct. at 2279-80. Respondent contends that *Verwiebe* requires extension of *Voisine*’s use-of-physical-force definition to the Armed Career Criminal Act

(“ACCA”), 18 U.S.C. § 924(e), under which Davis was sentenced. (No. 13-cv-01225, D.E. 19 at PageID 88-89.)

Petitioner is ORDERED to file a response to the government’s motion within fifteen (15) days of the entry-date of this order. The response shall address whether, and in what way, a distinction should be drawn between *Verwiebe*’s application of *Voisine* to the Guidelines’ Career Offender provision and application of *Voisine* to the ACCA. Respondent shall have seven (7) days to file a reply.

The resentencing currently set for October 12, 2017, is hereby removed from the Court’s calendar and will be reset at a later date.

IT IS SO ORDERED, this 4th day of October 2017.

s/ J. DANIEL BREEN  
UNITED STATES DISTRICT JUDGE